

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 1997-244-FH

RAMESS NAKHLEH,

Defendant.

OPINION AND ORDER

This matter is before the Court on defendant's motion for relief from judgment.

I.

Defendant alleges that he was arraigned on 2 counts of CSC 2nd as to a person under the age of 13, pursuant to MCL 750.520c(1)(a). He alleges that on July 11, 1997, he pled no contest to 1 count of CSC 2nd in exchange for the dismissal of the other CSC 2nd count. In this regard, he alleges that he was sentenced to 5 years of probation, with the first 365 days to be served in the Macomb County Jail, and with credit given for 103 days. However, he alleges that on June 7, 2001, the complainant, then approximately age 16, signed an affidavit indicating that defendant had never touched her in a sexual manner.

He alleges that the September 4, 2001 evidentiary hearing was adjourned so that counsel could be appointed for the complainant. According to defendant, the complainant asserted her Fifth Amendment right on September 10, 2001, but indicated during the June 6, 2002 hearing that she had perjured herself during defendant's preliminary examination. He alleges that the Court requested the parties to file briefs at the conclusion of the hearing.



1997-000244-
FH
00019595148
OPNIMGCC

In the motion at hand, defendant essentially contends that the above circumstances entitle him to withdraw his plea of no contest. He also seeks an order removing his name from the sex offender registration. However, the assistant prosecuting attorney disputes that defendant is entitled to the relief requested.

II.

At the outset, the Court is satisfied that this matter is governed by Subchapter 6.500 of the Michigan Court Rules. With respect to a motion for relief from judgment, MCR 6.508 provides in pertinent part that:

(D) The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

* * *

(3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates

(a) good cause for failure to raise such grounds on appeal or in the prior motion, and

(b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, "actual prejudice" means that,

* * *

(ii) in a conviction entered on a plea of guilty, guilty but mentally ill, or nolo contendere, the defect in the proceedings was such that it renders the plea an involuntary one to a degree that it would be manifestly unjust to allow the conviction to stand;

III.

After careful consideration, the Court is persuaded that the instant request for relief should be denied.

Defendant's plea of *nolo contendere* constituted an admission of all the essential elements of the CSC 2nd offense. *People v Patmore*, 264 Mich App 139, 149; 639 NW2d 385 (2004). By entering said plea, defendant waived his right to contest any claims or defenses going to his factual guilt. *People v New* 427 Mich 482, 493; 398 NW2d 358 (1986). His plea of

nolo contendere would have had the same effect as a guilty plea with respect to his ability to raise an issue on appeal. *Id.* Accordingly, defendant would have been able to raise only those defenses on appeal which challenged the state's authority to prosecute him. *Id.*

To prevail on his motion, defendant must establish "good cause" and "actual prejudice." MCR 6.508(D)(3)(a)-(b). Assuming *arguendo* that defendant is able to show "good cause," the Court finds that he cannot demonstrate "actual prejudice." Had the issue at hand been the subject of a timely appeal, it would not have been considered by the appellate court in light of the effect of the *nolo contendere* plea. *Patmore, supra; New, supra.* The Court opines that defendant should not presently be afforded a greater entitlement to relief than he would have been granted on appeal.

IV.

For the reasons set forth above, defendant's motion for relief from judgment is DENIED. In compliance with MCR 2.602(A)(3), the Court finds that this decision resolves the last pending issue and closes the case.

IT IS SO ORDERED.

EDWARD A. SERVITTO
CIRCUIT JUDGE

JUL 25 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: [Signature] Court Clerk

EDWARD A. SERVITTO, JR., Circuit Court Judge

Date:

Cc: Macomb County Prosecutor

Andrew Canu, Attorney for Defendant